

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Wireless Broadband Task Force Report)	GN Docket No. 04-163
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**COMMENTS OF
THE UNITED STATES DEPARTMENT OF JUSTICE**

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The United States Department of Justice ("DOJ") respectfully submits these comments in response to the Public Notice requesting comments on the Report released by the Wireless Broadband Access Task Force ("Task Force") on March 8, 2005.¹ The Task Force was created to "recommend[] possible changes in Commission policies that could facilitate the more rapid deployment of wireless broadband services for the benefit of all Americans."² To accomplish this task, "the Task Force recommends that the Commission apply a deregulatory framework -- one that minimizes regulatory barriers at both the federal and state levels -- to wireless broadband services."³ The Task Force also recognizes the importance of CALEA⁴ and notes "that in developing this deregulatory scheme, we anticipate that the Commission would consider whether and

¹ *Wireless Broadband Access Task Force Seeks Public Comment on Task Force Report*, Public Notice, GN Docket No. 04-163 (rel. Mar. 8, 2005) (hereinafter the "Report").

² Report at 1.

³ Report at 66.

⁴ Report at 67.

how certain discrete regulatory requirements -- such as those designed to ensure law enforcement access . . . should be applied in order to fulfill important federal policy objectives."⁵

I. CALEA Coverage of Wireless Broadband Internet Access Services

As the Commission considers the Report and decides which policies to alter to facilitate deployment of wireless broadband Internet access services, DOJ urges the Commission to take action consistent with the following tentative conclusions already reached by the Commission in the pending CALEA rulemaking.⁶ The Commission tentatively concluded that facilities-based providers of broadband Internet access service, *including wireless providers*, are subject to CALEA:

[W]e tentatively conclude that facilities-based providers of any type of broadband Internet access service, whether provided on a wholesale or retail basis, are subject to CALEA because they provide a replacement for a substantial portion of the local telephone exchange service used for dial-up Internet access service and treating such providers as telecommunications carriers for purposes of CALEA is in the public interest. *Broadband Internet access providers include, but are not limited to, wireline, cable modem, satellite, wireless, and broadband access via powerline companies.*⁷

⁵ *Id.*

⁶ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676, 15693-4 ¶ 37 (2004) (hereinafter the "CALEA NPRM").

⁷ *Id.* (emphasis added).

The CALEA NPRM also confirmed that all carriers offering service on a common carrier basis “are subject to CALEA regardless of the technology they deploy to offer their services, including packet-based technology.”⁸

The Task Force Report recommends several alternative options for establishing a deregulatory framework for wireless broadband services, including:

(1) classifying wireless broadband Internet access and other wireless services as “information services” under the Communications Act; (2) examining whether wireless broadband might constitute an “interstate” service; (3) applying the deregulatory principles applicable to Commercial Mobile Radio Services (“CMRS”) under Section 332(c) of the Communications Act, or using the CMRS regulatory scheme as a model for wireless broadband; or (4) clarifying the scope of state authority, under Section 332(c), in setting “other terms and conditions” as applied to all CMRS, including wireless broadband services.⁹

The Task Force Report solicits public comments on the four possible options outlined above.

National security and criminal law enforcement concerns focus on ensuring CALEA’s applicability to wireless broadband services. We believe that the Commission could adopt any of the four options and still preserve CALEA’s applicability to facilities-based wireless broadband Internet access providers. If the Commission adopts either option 3 or 4 above, CALEA’s applicability would be automatic and without question. However, even the first two options are consistent with the application of

⁸ *Id.* at ¶ 39.

CALEA.¹⁰ Adoption of those options would not directly and unequivocally address CALEA's applicability. Thus, if the Commission adopts either of the first two options, we urge the Commission to promptly adopt its tentative conclusions in the CALEA NPRM to resolve any doubt about CALEA's applicability to wireless broadband Internet access services.

II. Conclusion

DOJ respectfully requests the Commission continue to preserve the vital national security and criminal law enforcement capabilities of CALEA as it develops a deregulatory framework for wireless broadband Internet access services.

Dated: April 22, 2005

Respectfully submitted,

THE UNITED STATES DEPARTMENT OF JUSTICE

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⁹ Report at 68-73.

¹⁰ Option 2's classification of wireless broadband Internet access as an interstate service would not impact the separate analysis of whether such service is subject to CALEA, or for that matter, whether the service is a "telecommunications service" or "information service" under the Communications Act. Option 1's classification of the service as an "information service" under the Communications Act is limited to that Act and should not impact the Commission's tentative conclusion that the service should be classified as a "telecommunications service" under CALEA's separate statutory scheme.

and

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